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ATTORNEY'S DOCKET NO. C01041.70002.US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Wagner et al.  
Serial No: 09/241,653  
Conf. No.: 8996  
Filed: February 2, 1999  
For: METHODS FOR REGULATING HEMATOPOIESIS USING CPG  
OLIGONUCLEOTIDES  
Examiner: Jane Zara  
Art Unit: 1635

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CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Commissioner for Patents, Washington, D.C. 20231, on the 5<sup>th</sup> day of February, 2003.

  
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COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

**RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

This paper is filed in response to the Office Action mailed January 24, 2003 (Paper No. 29) in the above-captioned matter. Please enter the following election.

**ELECTION**

Applicants elect Group I, claims 1-26 and 66-72, with traverse.

**REMARKS**

Claims 1-41 and 51-74 were pending. No claims are cancelled by this response. The Applicant, in response to the Restriction Requirement set forth in Paper No. 29, has elected Group I, claims 1-26 and 66-72, with traverse.

Applicants traverse the Restriction Requirement on the grounds that all the claims of Groups I, II, and III have already been searched and previously deemed allowable. This suggests that the examination of the entire application has already been made without serious burden, and the examiner already examined the application on its merits, even though the examiner now asserts it includes claims to independent or distinct inventions. MPEP 803 sets forth criteria for proper restriction between patentably distinct inventions as:

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- (A) The inventions must be independent or distinct as claimed, and  
(B) There must be a serious burden on the examiner if restriction is required.

The two criteria, (A) and (B), are noted to be joined by "and". For the reasons above, Applicants respectfully submit that the criteria for restriction cannot be met because the second prong (B) of the criteria would appear not to apply. Without the required proper basis, the Restriction Requirement should be withdrawn.

It is believed that the claims are in condition for allowance. A favorable and early response is earnestly solicited. Should the Examiner have any questions, she is requested to call Applicants' representative at the number shown below.

Respectfully submitted,

By: 

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